

December 29, 2009

OSHA Docket Office
Docket No. H-022K-2006-0062
U.S. Department of Labor
Room N-2625
200 Constitution Avenue, NW
Washington, DC 20210

Re: Notice of Proposed Rulemaking (NPRM) --
Hazard Communication (74 FR 50279),
September 30, 2009

Dear Sir/Madam:

ORC Worldwide welcomes this opportunity to provide comments on the Occupational Safety and Health Administration's (OSHA) notice of proposed rulemaking (NPRM) seeking input on proposed modifications to the existing Hazard Communication Standard (HCS) to conform with the United Nations' (UN) Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

ORC Worldwide is an international management and human resources consulting firm whose Washington, D.C. office has for more than 35 years specialized in providing a wide array of occupational safety and health consulting services to businesses operating in the U.S. Currently, more than 140 large (mostly Fortune 500) employers in diverse industries are members of ORC's Occupational Safety and Health Networks. The focus of these networks is to promote effective occupational safety and health programs and practices in business and to facilitate constructive communication between business and government agencies responsible for establishing national occupational safety and health policy. The activities of ORC's Occupational Safety and Health Networks are based on the premise that providing safe and healthful working conditions is the mutual concern of employers, employees and government agencies.

Virtually all ORC member companies have significant global operations and include both producers and users of chemicals. They have a substantial interest in the consistent application of the GHS worldwide.

It should be noted that companies that are members of ORC's Occupational Safety and Health Networks have provided information, opinion and advice to ORC in the development of its comments; however, these comments are solely those of ORC and may differ from the views and comments of individual member companies.

ORC offers the following general comments:

ORC Supports Harmonization of the OSHA Hazard Communication Standard with the GHS

ORC has long supported harmonization of the OSHA Hazard Communication Standard (HCS) with the GHS and applauds the publication of this NPRM as significant step towards implementation of the GHS in the U.S. ORC hopes that OSHA, after careful consideration of all comments received in response the NPRM, will proceed without undue delay to publication of a final rule implementing the GHS.

ORC Agrees with OSHA's Approach Limiting Changes to the HCS, with Few Exceptions, to Those Required for Consistency with GHS

Although ORC supports adopting the GHS and recognizes the significant benefits this will bring to workers and businesses in the U.S., we also acknowledge that there will be an implementation burden for business. By modifying only those sections of the OSHA HCS that must be changed to be consistent with GHS, OSHA has taken an important step towards keeping implementation costs as low as practicable. Maintaining the current scope, application, and interpretations of the HCS, and modifying, with few exceptions, only those sections of the standard necessary for consistency with the GHS help minimize the costs to industry. We discuss elsewhere in this document the few areas where OSHA has proposed changes that are not included in the text of the 3rd edition of the GHS.

Training and Other Compliance Assistance Resources Will Be Essential to Controlling Implementation Costs and Ensuring Compliance

OSHA notes in the preamble (74 FR 50385) that the agency received many comments in response to questions in the ANPRM about what outreach or compliance assistance materials would be appropriate and useful. OSHA goes on to say, "The Agency will use this input to develop an outreach plan and prepare materials for distribution when the rulemaking is completed." ORC continues to believe that this will be an essential element of a smooth and successful transition to the modified HCS.

We also support OSHA's stated intent to work with NIOSH to develop standard training materials to address changes in label elements (pictograms, signal words, and hazard warnings) and to update the International Safety Cards to be consistent with the GHS. This issue is addressed in more detail in our discussion of Questions 28 and 29.

ORC Supports Concurrent Harmonization of Hazard Definitions in Most OSHA Standards

ORC agrees with OSHA's proposal to harmonize hazard communication components across most other OSHA standards in this rulemaking. ORC believes this is the most efficient way to address this necessary step in ensuring consistent hazard information and eliminating conflicting requirements.

ORC Comments in Response to Specific Questions in the NPRM (Keyed to Question Numbers in NPRM):

Need and Support for the Standard (1)

ORC agrees that most of the proposed modifications to the HCS will increase the quality and consistency of information provided to employers and employees. ORC believes that standardized label elements

will be more effective in communicating hazard information; standardized headings and a consistent order of information will improve the utility of SDSs; and employee training will support and enhance the effectiveness of the new label and SDS requirements. In addition, ORC believes that implementation of the GHS will, after some initial expense, ultimately reduce the costs to businesses of classifying chemicals as to their hazards and creating warning labels and safety data sheets.

Economic Impacts and Economic Feasibility (2)

Individual ORC member companies produce, import, distribute or export from fewer than 100 chemicals to tens of thousands of hazardous chemicals. ORC has urged members to provide company specific information individually to OSHA.

Effects on Small Entities (3-4)

ORC's clients are large, primarily global, companies. However, many, if not most, ORC client companies purchase chemicals from chemical manufacturers, vendors and other suppliers of chemicals that may be small entities. Consistent requirements for all manufacturers and importers of chemicals are needed to maximize efficiency in the chemical supply chain. ORC believes that OSHA can best address the concerns of small entities by providing comprehensive compliance and outreach assistance.

Hazard Classification (6-12)

Question 6 – ORC agrees with OSHA's proposal to adopt all of the physical and health hazard classes in the GHS. ORC also agrees with OSHA's proposal to include all hazard categories in the GHS except Acute Toxicity Category 5 for oral, dermal, or inhalation exposures; Skin Corrosion/Irritation Category 3; and Aspiration Hazard Category 2.

Question 7 – ORC agrees with OSHA's proposal to add a definition for unclassified hazards to the HCS to ensure that all hazards currently covered by the HCS--or new hazards that are identified in the future--are included in the scope of the revised standard until such time as specific criteria for the effect are added to the GHS and subsequently adopted by OSHA. We believe this a prudent approach to providing interim coverage for hazards such as combustible dust. Combustible dust hazards, in particular, have caused serious loss of life and significant economic consequences and have not been adequately addressed under the current HCS.

We offer the following additional comments on Question 7:

- ORC agrees with several of our members who suggest that the term "hazards not otherwise classified" be substituted for OSHA's term "unclassified hazards" to prevent possible confusion about the meaning of this section.
- ORC also agrees with several of our members who believe that OSHA should work with the UN Sub-Committee of Experts on the GHS (UNSCEGHS) to develop criteria for this category of hazards.

- Finally, ORC notes the concern of several members regarding the impact on SARA 311 and 312 reporting of the addition of chemicals newly classified as “hazardous” under the HCS. ORC has urged its members to submit to OSHA detailed comments on this issue as part of this rulemaking.

Question 8 – ORC agrees with OSHA’s proposal to add specific coverage for simple asphyxiants to the standard in the final rule to ensure that this hazard is addressed consistently on labels and SDSs -- rather than addressing them under the unclassified hazard definition. In addition, ORC agrees that this effect is simple and straightforward, and could be addressed in a definition that does not involve extensive criteria. We believe OSHA’s proposed definition and approach to SDSs and labels is appropriate.

Question 9 – ORC agrees that the proposed modifications to the HCS aligning the standard to the GHS eliminates the need for the “floor of chemicals” and “universal one-study rule” in the current HCS. We agree that the proposed detailed criteria provide sufficient guidance for a thorough—and improved -- hazard evaluation.

Question 10 -- ORC agrees with OSHA’s decision to edit the chapters in the GHS for classification of physical and health hazards to remove material not directly related to classification and to otherwise streamline the text. OSHA “anticipates providing the decision logics separately to serve as guidance, but has not included them in the regulatory text.” ORC urges OSHA to issue the decision logics at same time as final rule.

Question 11 -- ORC believes that to avoid confusion, classification criteria for the packaging, transportation, storage, use and handling of explosives should be performed pursuant to the jurisdiction and requirements of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Defense (DOD) or Department of Transportation (DOT).

Question 12 – OSHA notes that the GHS gives countries guidance on a cut-off or concentration limit for chemical mixtures containing target organ toxicity hazards. In Appendix A, Section A.8.3, OSHA is proposing to make the suggested 20% concentration limit mandatory so that label preparers are clear on what needs to be done. OSHA asks for comment on whether this mandatory concentration limit is appropriate. Several ORC members have expressed concern about this provision. ORC has suggested that these companies submit recommendations for alternative approaches and their rationale directly to OSHA as part of this rulemaking.

Labels (13-16)

Question 13 - The proposal would require pictograms to have a red frame. OSHA believes that use of the color red will make warnings more noticeable and will aid in communicating the presence of a hazard. However, as OSHA notes, the GHS gives competent authorities such as OSHA the discretion to allow use of a black frame when the pictogram appears on a label for a package which will not be exported. ORC believes that for packages that will not be exported, the modified HCS should allow black frames on pictograms, for consistency with the GHS.

Question 14 – In addition to the pictograms, signal word and hazard statements, GHS labels must include precautionary statements. ORC supports OSHA’s proposal to require the text in the precautionary statements in the GHS to be on HCS labels. While not yet considered to be part of the harmonized text of the GHS, they are codified under the GHS, meaning that numbers have been assigned to them. In

addition, the appropriate statements to use for each hazard class and category have been indicated in the GHS annexes. ORC believes that improved and more consistent information on labels will result when label preparers know exactly what precautionary statements to apply once they complete their hazard classification. We also agree that chemical users will benefit from seeing consistent language on labels to indicate necessary precautionary measures. However, where a hazard warrants additional precautionary language, OSHA should allow this information to be added. In addition, where there is evidence that a precautionary statement is inappropriate for a particular chemical, OSHA should allow that it be deleted. We have asked ORC members to provide directly to OSHA information on circumstances where a specific precautionary statement may be inappropriate.

Question 15 - OSHA has not proposed to require the exploding bomb pictogram or specific precautionary statements for Division 1.4S ammunition and ammunition components because the specified GHS label elements may not accurately reflect the hazards of these materials. ORC agrees with OSHA's approach and suggests the following language regarding explosives:

“Labeling of explosives shall be performed pursuant to the jurisdiction and requirements of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Defense (DOD) or Department of Transportation (DOT).”

Questions 16--The current HCS requires labels to be updated within three months of obtaining new and significant information about the hazards. The Agency has not been enforcing this provision for many years, and there has been an administrative stay on enforcement. OSHA is including the provision in this proposal, and invites comment on it with the intention of including it in the final rule and lifting the stay. ORC agrees that OSHA should include this provision in the final rule. The three month interval is consistent with the current requirement to update SDSs when new and significant information about hazards becomes available. We recognize that new technology in many cases links updates to SDSs and labels, making new label generation considerably more efficient than when earlier versions of the HCS were published. Virtually all ORC members who participated in the preparation of these comments agreed that the three month provision is appropriate. However, one company believes that companies should have up to one year to update SDSs with new or significant information and one company believes that 6 months would be needed for companies to comply with this requirement. ORC has suggested that companies with concerns about this provision provide further information directly to OSHA regarding relevant technological and economic feasibility issues.

Safety Data Sheets (SDSs) (17-18)

Questions 17- ORC agrees with OSHA's proposal to require that OSHA permissible exposure limits (PELs) be included on the SDS, as well as any other non-mandatory exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the safety data sheet.

Question 18 -- OSHA is proposing that Section 15 of the SDS be non-mandatory. Section 15 addresses regulatory information concerning the chemical. OSHA is considering requiring the substance specific standards be referenced in this section, which would make Section 15 mandatory. ORC believes that including information about regulatory information, including the existence of a substance specific standard would be useful. However, ORC believes that Section 15 should be non-mandatory.

Other Standards Affected (19-24)

Question 19 -- ORC agrees that the methods OSHA proposes to classify flammable liquids Category 1 and 2 and flammable aerosols are similar enough to the current definitions that substances that are currently regulated by OSHA would continue to be regulated and that few, if any, changes would result in a shift in regulatory coverage.

Question 20 -- OSHA is proposing to eliminate the term "combustible liquid" in 29 CFR 1910.106, 1910.107, 1910.123, 1910.124, 1910.125, and 1926.155 for liquids with a flashpoint above 100 °F. To reflect consistency with the revised HCS where appropriate, OSHA is proposing to add the specific flashpoint criteria. This will maintain equivalent protection. ORC is not aware of any other standards that OSHA should update with the new terminology.

ORC notes that one ORC member has expressed concerns about OSHA's approach to the issues in Questions 19 and 20. We have suggested that this company submit directly to OSHA information on alternatives.

Question 21 -- OSHA is proposing to modify the language required on signs in substance-specific health standards. The Agency developed the proposed language to reflect the terminology of the revised HCS while, at the same time, providing adequate warning through language that is consistent with the current sign requirements for these chemicals. OSHA notes that an added benefit is that the hazard warnings on signs specified for these standards will now be consistent throughout OSHA standards. For example, all carcinogens will now bear the hazard statement "MAY CAUSE CANCER." ORC believes that a requirement to use language that is consistent on both signs and labels will improve comprehension for employees and that the benefits of this approach offset the costs that will be incurred in making this change.

Question 22 -- The modified HCS will dictate the specific language (i.e., signal word, hazard statement(s), and precautionary statement(s)) that is required on labels through the classification process. However, OSHA is proposing to maintain in some substance-specific standards specific language for labels on contaminated clothing and waste/debris containers to ensure adequate hazard communication for the downstream recipients. ORC supports this approach. We are not aware of any alternatives to OSHA's approach for the substance-specific standards that will assure information is disseminated in a manner that is consistent with the modified HCS labeling requirements.

Question 23 -- In determining the health hazards that need to be considered by manufacturers, importers and distributors when classifying chemicals regulated by the substance-specific standards, OSHA is proposing to rely primarily on the determinations made by the Agency in each rulemaking, the NIOSH Pocket Guide to Chemical Hazards (2005) and the International Chemical Safety Cards, and use as a secondary source the health effects identified by the European Commission (2007). OSHA is proposing to include a health hazard only if it is identified as such by two or more of these organizations. OSHA asks if there are other sources of information that OSHA should consult. ORC supports this approach.

Question 24 -- OSHA is not proposing in this rulemaking to update the electrical standards (general industry 1910 subpart S and construction 1926 subpart K) or explosives and blasting agents (general industry 1910.109 and construction 1926.914). These subparts are "self-contained" in that they do not rely on other OSHA standards for regulatory scope or definitions, but reference external organizations (such as the National Fire Protection Association [NFPA]). OSHA believes that these standards could be

updated when the referenced external organizations adopt applicable GHS elements. ORC strongly supports this approach.

Effective Dates (25-27)

Question 25 -- OSHA has proposed to require that employers train employees regarding the new labels and safety data sheets within two years after publication of the final rule to ensure they are familiar with the new approach when they begin to see new labels and SDSs in their workplaces. ORC agrees that the proposed time is appropriate.

Question 26 -- OSHA has proposed that chemical manufacturers, importers, distributors, and employers be required to comply with all provisions of the modified final rule within three years after its publication. ORC notes that several client companies believe that OSHA should require that SDSs and labels for substances be modified within 2 years, with changes to mixture SDSs and labels required in 3 years. As ORC noted in our comments on the ANPRM,

OSHA should consider a company's place in the manufacturing supply chain, not size, in determining how the phase-in is implemented. It would be sensible to start with producers of raw materials and basic chemicals. The technical information, classification and categorization they perform will be useful downstream for the intermediate chemical producers and specialty chemical manufacturers.

ORC asks that OSHA reconsider this approach, although we understand OSHA's view that "the supply chain is not always orderly and logical" and that customer demands and other market forces may result in supply chain coordination that would eliminate the need for a specific phase-in schedule for different types of producers (74 FR 50404).

Question 27 -- ORC is not aware of any other factors that should be considered in establishing the phase-in period.

Compliance Assistance and Outreach (28-29)

Question 28-- OSHA asks for information on what types of materials or products would best assist employers in understanding and complying with the modified HCS, as well as the best means of distributing these materials. ORC applauds OSHA's appreciation of the need for compliance assistance materials. We strongly recommend that compliance materials be issued at the same time as the final rule and include online tools such as decision logics for classification, training materials such as PowerPoint presentations, pre and post training quizzes, and posters; written program templates; templates for workplace signs and labels; best practices for applying labels to different kinds of packages and containers, and templates for SDSs.

The OSHA website is an effective way to make compliance assistance materials available. In addition, OSHA should seek active methods to disseminate information to stakeholders, including reaching out to OSHA Alliances, VPP participants, trade associations and others.

Question 29-- OSHA received a number of comments that suggested that a data base of chemical classifications should be developed and maintained to assist chemical manufacturers and importers in performing hazard classifications. ORC does not believe that OSHA should develop such a list. As OSHA suggests, generating and keeping such a list up-to-date would take enormous resources—resources that OSHA can better apply to other efforts.

Alternative Approaches (30)

Question 30 -- OSHA asks for comment on alternatives to the scope and application of the proposed rule. ORC believes OSHA's proposed approach to aligning the HCS with the GHS will increase the quality and consistency of chemical hazard information provided to employers and employees. Standardized label elements will be more effective in communicating hazard information; standardized headings and a consistent order of information will improve the utility of SDSs; and employee training will support and enhance the effectiveness of the new label and SDS requirements. In addition, ORC believes that OSHA's efforts to limit change primarily to those aspects of the HCS that need to be changed for consistency with the GHS will mean keeping costs as low as possible for businesses.

ORC appreciates the opportunity to present these comments in response to the NPRM and would be happy to discuss any of these comments further with OSHA staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank White". The signature is written in a cursive style with a large initial "F" and "W".

Frank White
Senior Vice President